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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

Teamsters Pension Trust Fund of Philadelphia and Vicinity, Teamsters Health and Welfare Fund of Philadelphia and Vicinity and Charles J. Schaffer, Jr.
Petitioners,

v.

Roger E. Wooleyhan,
Ralph K. Fillingame,
William A. Phillips and
Roger B. Wooleyhan
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF DELAWARE

RESPONDENTS' BRIEF IN OPPOSITION

F.L. PETER STONE, Counsel of Record
RICHARD DAVID LEVIN
CHARLES J. DURANTE
CONNOLLY, BOVE, LODGE & HUTZ
1220 Market Building
P.O. Box 2207
Wilmington, Delaware 19899
(302) 658-9141
Attorneys For Respondents

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

COUNTER-STATEMENT OF THE QUESTION PRESENTED

Should this Court grant a petition for certiorari to review a decision in which the Supreme Court of Delaware correctly construed 29 U.S.C. § 1144 in a manner not in conflict with any decision of this Court or the most recent decision of any federal court, holding that the Employee Retirement Income Security Act of 1974, as amended, does not permit the use of remedies under a state wage claim statute to redress a failure to make required contributions to an employee benefit plan.

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COUNTER-STATEMENT OF THE FACTS[1]

Petitioners, Teamsters Pension Trust Fund of Philadelphia and Vicinity and Teamsters Health and Welfare Fund of Philadelphia and Vicinity (respectively "Pension Fund" and "Welfare Fund" and jointly "Funds") are "multi-employer plans" and "employee benefit plans" within the meaning of 29 U.S.C. § 1002(37), Section 3(37) of the Employee Retirement Income Security Act of 1974 as amended by the Multi-Employer Pension Plan Amendments Act of 1980 (collectively "ERISA") (Complaint ¶2). Petitioner Charles J. Schaffer, Jr. is a fiduciary within the meaning of 29 U.S.C. 1002(21), Section 3(21) of ERISA and was authorized to bring claims for benefits on behalf of the Funds (Complaint ¶3).

Respondents Roger E. Wooleyhan, Ralph K. Fillingame, William A. Phillips and Roger B. Wooleyhan were officers or managing agents of Wooleyhan

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[1] The issue presented to the trial court and reviewed by the Supreme Court of the State of Delaware in the instant case was submitted on the Complaint and Respondents' Motion to Dismiss only. It is well established that for purposes of passing on such a motion, the allegations of the Complaint are construed favorably to the pleader. *Scheuer v. Rhodes*, 416 U.S. 232 (1974). However, Petitioners' Statement of the Case is replete with allegations immaterial to the Court's consideration of the questions presented and expands well beyond any reasonable inferences to be drawn from the allegations of the Complaint. Petitioners have embellished the limited record with collateral "facts," which even if of record, still do not present a basis which would entitle them to the relief sought in their Complaint. Respondents have attached Petitioners' Complaint here-to as Appendix A and included this Counter-Statement of the Facts to reflect more accurately the uncontested facts of the case from which reasonable inferences may be drawn.

Transport Company ("Wooleyhan" or "Company") (Complaint ¶5). The Company was a Delaware Corporation and employer within the meaning of 29 U.S.C. § 1002(5), (11) and (12), Section 3(5), (11) and (12) of ERISA (Complaint ¶4) which had filed for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. Chapter 11 (Complaint ¶12).

Wooleyhan had been a party to collective bargaining agreements with locals of the International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of American ("Labor Contract") (Complaint ¶6) and trust agreements with the Funds ("Trust Agreements") (Complaint ¶7). Under the Labor Contract and/or Trust Agreements the Company had agreed, *inter alia*, to make full and timely payments for benefits to the Funds (Complaint ¶18).

Prior to filing for Bankruptcy protection the Company failed to make payment to the Welfare Fund in the amount of "at least" $12,971.07 and failed to make payment to the Pension Fund in the amount of "at least" $34,424.54 (Complaint ¶11). After the filing of the corporate bankruptcy, Petitioners filed a Complaint in the Superior Court of Delaware against Respondents (Appendix A) claiming that under 19 *Del.C.* §§ 1101-1115, the Delaware Wage Payment and Collection Act ("WPCA"), Respondents as corporate officers or managing agents of Wooleyhan were *individually* liable for payment of benefits due from the Company because they knowingly permitted the Company to withhold such payments (Complaint ¶¶13-17).

Respondents countered by filing a Motion to Dismiss the Complaint for failure to state a cause of

action, in that ERISA, particularly 29 U.S.C. § 1144(a), preempted WPCA.

The Delaware Superior Court granted Respondent's motion to dismiss and the Supreme Court of Delaware affirmed. Petitioners have sought a writ of certiorari to review the Order of the Supreme Court of Delaware. Respondents oppose Petitioners' application.

REASONS WHY THE PETITION SHOULD BE DENIED

I. THERE ARE NO SPECIAL AND IMPORTANT REASONS WHY CERTIORARI SHOULD BE GRANTED BECAUSE THE ISSUE IS SETTLED AND THERE IS NO APPELLATE CONFLICT.

There is no "appellate conflict," as Petitioners describe it (Petition, p. 6), which warrants the Court's attention to this matter, which was correctly decided by the Supreme Court of Delaware, in accordance with principles set forth by this Court. The Delaware Court's decision in this case, that the Delaware wage claim statute does not give a right of action to the fiduciary of an ERISA plan to require contributions to be made by individuals to the plan, follows the law of its Circuit, *McMahon v. McDowell*, 794 F.2d 100, 3d Cir., *cert. denied*, 107 S.Ct. 473 (1986), and no other circuit has ruled to the contrary.

Indeed, the decision of the Supreme Court of Delaware accords with the conclusion of every federal court which has had the occasion to rule on the question it decided, that is, that remedies under state wage claim statutes are not available to redress employers' failure to make required contributions to ERISA. *Bartucca v. Katy Inds., Inc.*, 668 F.Supp. 111 (D.Conn. 1987) (holding remedies under Connecticut wage claim statute unavailable to redress employer

breaches of duty to ERISA plan, due to preemption); *Mylstar Electronics, Inc. v. McNeil*, slip op., No. 86-C-837 (N.D.Ill. E.Div. 1986) (enjoining use of Illinois wage claim to enforce rights under ERISA plan); *Trustees v. Aberdeen Blower and Sheet Metal Workers, Inc.*, 559 F.Supp. 561 (E.D.N.Y. 1983) (holding New York labor law's criminal remedies to be preempted by ERISA with respect to contributions to an ERISA plan). Such conclusions have been affirmed by this Court. *Gilbert v. Burlington Industries, Inc.*, 765 F.2d 320 (2d Cir. 1985), *aff'd*, 477 U.S. 901 (1986) (barring use of New York state wage collection remedies to enforce rights asserted under an ERISA plan).

These decisions represent unanimity among all federal courts on this issue, all of which, like the decision of the Supreme Court of Delaware, properly apply the past decisions of this Court and the explicit intent of Congress in Section 514 of ERISA, 29 U.S.C. § 1144, which provides (with exceptions not here relevant regarding state insurance, banking, securities and general criminal laws) that ERISA's enforcement provisions "shall supersede any and all State laws insofar as they may relate to any employee benefit plan" (with other exceptions inapplicable here).

Because Congress intended the regulation of employee benefit plans to be "exclusively a federal concern," *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981), the Supreme Court has broadly interpreted the words "relate to," in Section 1144(a), as encompassing—and preempting—any state law that has any "connection or reference to" employee benefit plans. *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 97 (1983). This Court's rulings were grounded in the legislative record, including Representative Dent's

comments on the House floor that "the crowning achievement of this legislation [is] the reservation to Federal authority sole power to regulate the field of employee benefit plans," 120 Cong.Rec. 29197 (1974), and the contemporaneous comments of Senator Williams, chair of the Senate Labor and Education Committee, that the enforcement provisions of the final version of the bill were "intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments." 120 Cong.Rec. 29933.

Thus, ERISA preempts all state laws insofar as they apply to employee benefit plans,[2] even if those state laws amount only to indirect regulations of such plans, *Alessi*, 451 U.S. at 525, and "displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive provisions." *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 739 (1985).

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[2] This preemption continued even after the enactment of the Multi-Employer Pension Plan Amendments Act of 1980 ("MPPAA"), P.L. 96-364, as the Conference Report to MPPAA emphasizes: "The House amendment to the Senate amendment to the bill provides no exemption from the preemption provision of Section 514 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. § 1144]. The Senate amendments [do] provide an exemption from Section 514(a) of ERISA. . . The Senate recedes to the House petition." H.Rep.No. 96-869, Part II, p. 42, 1980 U.S. Code, Cong. & Admin. News 3032. Petitioners' suggestion to the contrary, at p. 6 of the Petition, is disingenuous. Actions may be maintained in state courts, *cf.*, 29 U.S.C. §§ 1132(e), 1451(c), but only to assert the claims, and seek the remedies, permitted under ERISA. 29 U.S.C. § 1144(a); *Duffy v. Branner*, 529 A.2d 643 (Vt.Supr. 1987).

This Court has restated these principles recently in the companion cases of *Metropolitan Life Insurance Co. v. Taylor*, 481 U.S. 58 (1987), and *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987) (holding that common law contract and tort remedies cannot be used to enforce an employee's right under an ERISA plan); and the exception that proves the general rule, *Fort Halifax Packing Co., Inc. v. Coyne*, ___ U.S. ___, 107 S.Ct. 2211, 2217 (1987) (holding that a state plant-closing law is not preempted by ERISA, because the law's scope did not relate to any employee benefit *plans*, and emphasizing, "Pre-emption ensures that the administrative practices of a benefit plan will be governed by only a single set of regulations").

In summary, this Court has amply outlined the scope of the preemptive effect of ERISA's enforcement provisions. The Petition has not shown any reason why the Court needs to restate these principles in this case—nor has the Petition shown how the Delaware Supreme Court's decision conflicts with the principles already set forth by this Court, so often and so recently.

The Petition's argument for the granting of certiorari is premised on an asserted "appellate conflict." The Petition cites two cases as evidence of this ostensible conflict. One of them, *Carpenters Health and Welfare Fund of Philadelphia and Vicinity v. Ambrose*, 727 F.2d 279, 282 (3d Cir. 1983), which dismissed in a footnote the contention that ERISA preempted state wage claim remedies as "without merit," has been repudiated by the very court that issued it. The other is an aberrant state court holding, *Sasso v. Vachris*, 484 N.E.2d 1359 (N.Y.Ct.App. 1985), which was issued before this Court's instructive

decisions on ERISA preemption in *Metropolitan Life v. Taylor*, *Dedeaux* and *Fort Halifax*, and which thus instead could only rely on the discredited *Ambrose* decision.

In *McMahon v. McDowell*, *supra*, the Third Circuit reversed its decision in *Ambrose*, the only federal decision cited by Petitioners in support of its position. In *McMahon*, the Third Circuit held that the use of remedies under a state wage claim statute to redress delinquent employer contributions to ERISA plans "does not merely relate to [the] pension plans, it competes with the mechanism that Congress carefully established in ERISA itself." 794 F.2d at 106. The Court confronted its prior footnote to the contrary in *Ambrose*, and rejected it.

> When *Ambrose* was submitted to this court, the Supreme Court's decision in *Shaw* had not yet been announced and there is no reference to it in the *Ambrose* opinion. Moreover, subsequent to the issuance of the *Ambrose* opinion, the Supreme Court decided *Metropolitan Life Insurance*, 105 S.Ct. 2380 (1985). *Shaw* and *Metropolitan Life* make it very clear that state laws relating to a covered plan, even those that are arguably consistent with the goals of ERISA, are preempted by Section 514(a), 29 U.S.C. § 1144(a). We do not believe that this aspect of *Ambrose* can survive *Shaw* and *Metropolitan Life*.

794 F.2d at 108. The only federal case cited by Petitioners in support of their position has been overruled by the Court that issued it. It is astonishing that the Petition does not acknowledge this fact.

The other case relied upon by Petitioners, *Sasso*, was decided three years ago, without the guidance of this Court's recent rulings, and instead was based on *Ambrose*, since overruled, and on an analogy to *AT&T v. Merry*, 592 F.2d 118 (2d Cir. 1979), whose holding, permitting garnishment of accrued pension benefits under a state domestic relations order, has since been addressed by an amendment to ERISA. 26 U.S.C. § 401(a)(13)(B).

This Court is not faced with "an appellate conflict" on preemption of state law remedies by ERISA. It is not presented with any "special and important reasons," as required by Rule 17 of this Court, to review this case on writ of certiorari. It is faced only with an attempted resuscitation of outdated and overruled decisions that do not create any conflict between the Delaware Supreme Court's ruling in this case and the controlling law in this area, as set forth by this Court and as applied by every federal court which has ruled on this question.

.II. THE ISSUE PETITIONERS RAISE IS "IMPORTANT" ONLY TO THE EXTENT THAT CONGRESSIONAL INTENT TO MAINTAIN A UNIFORM NATIONAL MULTI-EMPLOYER PENSION SYSTEM BE SUSTAINED BY LEAVING UNDISTURBED THE CORRECT DELAWARE DECISIONS BELOW.

As discussed in Argument I, ERISA indubitably was designed to create a uniform national employee benefit system for employers like Wooleyhan, their employees and the unions, such as the Teamsters, for covered multi-employer plans. As noted above, ERISA is broadly preemptive of all state laws which relate to such employee benefit plans. 29 U.S.C. § 1144(a). In this case, without dispute, all parties and

plans are under ERISA. It is equally beyond dispute that ERISA makes no provision for imposition of individual liability on Respondents, who at one time were officers or managing agents of the Wooleyhan corporation.

In this uniform federal system, certainty and predictability of operation and enforcement from state to state was considered important by Congress, including the enforcement remedies available. *See* S.Rep.Nos. 93-127, 93-383, 93rd Cong., 2nd Sess., *reprinted in* 1974 U.S. Code, Cong. & Admin. News 4882-83, 4990-5001, Statement of Senator Williams at 5187-89. For this reason, Congress has designed ERISA with a preemptive force that is "unique" and "extraordinary." *Metropolitan Life Insurance Co. v. Taylor, supra,* 107 S.Ct. at 1547.

Petitioners assert that Delaware collection law in addition to ERISA enforcement procedures is available to them. This includes the Delaware WPCA which permits what ERISA itself does not— direct personal collection actions against officers and managing agents of corporations such as Respondents. 19 *Del.C.* §§ 1101-1115. Respondents contend that valid grounds for this assertion of Petitioners cannot be found in the ERISA statute, its legislative history or the decisions of this Court and the lower federal courts. Moreover, the result sought would lead to the very lack of uniformity which is clearly contrary to the federal statutory scheme. Thus the "importance" of the instant Petition is simply this Court's opportunity to reinforce Congressional intent, and affirm the Delaware courts' correct view of ERISA, by denying certiorari.

The Delaware courts below found no basis for subsuming state remedies under covered plans, relying on this Court's decisions in *Pilot Life Insurance Co. v. Dedeaux* and *Metropolitan Life Insurance Company v. Taylor, supra.* Particularly *Metropolitan Life* was considered controlling because it involved enforcement of a covered ERISA plan with state remedies. *Id.* 107 S.Ct. at 1546-1548.

Congress enacted a uniform national system which includes its own detailed enforcement provisions It did not explicitly in-corporate supplementary state enforcement remedies. *Cf. Combs v. Indyk*, 554 F.Supp. 573 (E.D.Pa. 1982). This was done deliberately because doing otherwise would lead to multiple enforcement systems in different states, frequently involving the same employers and unions, with the only difference geography. Congress not surprisingly chose not to do so. *McMahon v. McDowell, supra.*, 794 F.2d at 105-07; S.Rep.No. 93-127, 93rd Congress, 2nd Sess., *reprinted in* 1974 U.S. Code, Cong. & Admin. News 4871-72, 4882-83.[3] With limited exceptions spec-

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[3] A pertinent excerpt from the cited Senate Report reads:

> "The intent of the Committee is to provide the full range of legal and equitable remedies available in both state and federal courts and to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities under state law or recovery of benefits due to participants.
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> * * *
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> Because of the interstate character of employee benefit plans, the Committee believes it essential to provide for a uniform source of law in the areas of vesting, funding, insurance and portability standards, for evaluating fiduciary

ified in ERISA itself, plan enforcement is a function of federal law only. *Id.* 5188.

On occasion in the past Congress has deliberately adopted state enforcement remedies as part of a federal scheme. *See e.g.*: Fair Labor Standards Act, 29 U.S.C. § 218 (1982); Age Discrimination in Employment Act, 29 U.S.C. § 633 (1982); Title VII of the Civil Rights Act of 1968, 42 U.S.C. § 2000h-4 (1982). However, in ERISA, including the 1980 Amendments, Congress clearly did not do this and an intent to the contrary cannot be implied from the several miscellaneous sections cited by Petitioners. As Judge Stapleton observed in *McMahon*: "Had Congress intended to impose the additional liability sought by plaintiff, it surely knew how to do so. However, it chose not to authorize this sort of personal liability." *McMahon v. McDowell, supra.*, 794 F.2d at 107.

Delaware state law dealing with collection remedies and personal liability of individuals connected with corporate employers is similar to that of Pennsylvania, but differs from comparable laws in other states, many of which provide wage and fringe benefit collection procedures which are more restrictive. 19 *Del.C.* § 1101(b); 43 *Pa.Stat.* § 260.1 et seq.; *cf. e.g.*, *NJSA* 34:11-57 *et seq.* (New Jersey); *An.Code Md.*, Art. 100, § 93 *et seq.* (Maryland).

Whether or not and under what specific circumstances the corporate veil may be penetrated and personal liability assigned to individual shareholders, officers, directors or employees of corporate employers is a significant factor in the initial contemplation,

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conduct, and for creating a single reporting and disclosure system in lieu of burdensome multiple reports."

undertaking and maintenance of employee benefit plans by corporate employers. The spectre of unclear personal liability could well chill employer generosity. Liability standards and enforcement should not vary from state to state and wisely was included in the uniform system enacted by Congress. Piercing the corporate veil to pursue other than corporate assets in the case of delinquent contributions to a multi-employer plan can be achieved only if permitted by ERISA itself. *See* 29 U.S.C. § 1301.[4] In the legislative history of ERISA some members of Congress evinced some interest in expanding the legislation to incorporate state remedies. However, this did not happen, lending strength to Respondents' view of the resulting statute. Sen. Debate, August 22, 1974, 1974 U.S. Code, Cong. & Admin. News 4770-71.[5]

Thus Petitioners' discussion of an "important" question in its Argument II of the Petition speculates beyond anything supportable by the facts of this case.

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[4] *See, also Solomon v. Klein*, 770 F.2d 352 (3d Cir. 1985) and *Connors v. P&M Coal Co.*, 801 F.2d 1373 (D.C. Cir. 1986) (holding that ERISA, as amended by MPPAA, does not permit imposition of personal liability on a shareholder or officer for a corporation's contributions to an ERISA plan, in absence of proof that corporation is to be disregarded as a matter of corporate law —an allegation not made or supported in this case).

[5] Included in the cited Senate debate were the following comments of Senator Harrison Williams:

> "State laws compelling disclosure from private welfare or pension plans, imposing fiduciary requirements on such plans, imposing criminal penalties on failure to contribute to plans—unless a criminal statute of general application—establishing state termination insurance programs, et cetera, will be superseded."

The instant case does not generally invoke "* * * preemption of State law affecting commercial transactions involving employee benefit plans * * *." Petition, p. 10. Petitioners' stated ambit is far too broad and their arguments which follow are dehors the facts at bar and academic at best. Their worries about a "vacuum of commercial law" (Petition, p. 11) find no support in the very limited facts in the Complaint below, the only facts of record herein (*supra*, p. 1, ftn. 1). Therefore, Petitioners' succeeding litany of preemption "horribles," including federal preemption of state corporate and security laws, state personal injury law and state liens, are not before this Court and constitute rank speculation. Petition, pp. 11-13. In actuality, if Congress hereafter chose to regulate and preempt any or all of those areas under the Commerce Clause, it arguably could; but presumably it would do so directly, as it did in ERISA, and the constitutionality thereof would thereafter be duly tested. The instant facts are not the proper setting to speculate on what might occur, but has not. Involved herein is the narrow question of whether Delaware WPCA collection remedies have somehow been engrafted into federal ERISA enforcement of covered plans, where the federal statute itself contains no such remedies, and makes no explicit incorporation. ERISA, its legislative history and the decisions of this Court clearly demonstrate the answer is no. The Supreme Court of Delaware correctly decided that Delaware wage claim remedies cannot be used to enforce rights arising out of employee benefit plans under ERISA.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectively submitted,

CONNOLLY, BOVE, LODGE AND HUTZ

BY: _____

F.L. PETER STONE, Counsel of Record
RICHARD DAVID LEVIN
CHARLES J. DURANTE
1220 Market Building
P.O. Box 2207
Wilmington, Delaware 19899
(302) 658-9141
Attorneys for Respondents